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Attorneys for Defendant
CITY OF PITTSBURG and
G. TRAVIS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TAM HA,

Plaintiff,

v.

CITY OF PITTSBURG; PITTSBURG
POLICE OFFICER G. TRAVIS #P317,

Defendants.

Case No. 3:19-CV-00755-EDL

ANSWER TO COMPLAINT

Hon. Elizabeth D. Laporte

Trial: None set

Comes now Defendant PITTSBURG POLICE OFFICER G. TRAVIS (“Defendant”), and
in answer to the complaint on file herein admit, and allege as follows:

I. PARTIES

1. In answer to the allegations of paragraph 1 of the complaint, this defendant has no
information or belief to enable it to answer said allegations, and for that reason and basing its
denials on that ground, deny both generally and specifically, each and every, all and singular, the
allegations contained therein.

2. Admitted.

3. In answer to the allegations of Paragraph 3 of the complaint, beginning and ending
with “Defendant Officer G. Travis # P 317 ... he was employed as police officer for the City of
Pittsburg at the time of the incident in question. This Defendant is being sued in his individual

capacity,” admitted. In answer to the allegations of Paragraph 3 of the complaint, beginning and ending with “is a police officer employed by the City of Pittsburg, and,” denied.

4. In answer to the allegations of paragraph 4 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

5. In answer to the allegations of paragraph 5 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

II. JURISDICTION AND VENUE

6. Admitted.

7. In answer to the allegations of Paragraph 3 of the complaint, beginning and ending with “the events giving rise to this action occurred in the City of Oakland, California,” denied. Defendant agrees that venue is proper in the Northern District of California.

III. STATEMENT OF FACTS

8. Admitted.

9. Admitted.

10. Admitted.

11. In answer to the allegations of paragraph 11 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

12. In answer to the allegations of paragraph 12 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

13. In answer to the allegations of paragraph 13 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

14. In answer to the allegations of paragraph 14 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

15. In answer to the allegations of paragraph 15 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

IV. CAUSES OF ACTION

FIRST CLAIM

(Violation of Plaintiff's Fourth Amendment Rights 42 U.S.C. §1983 Excessive Force)

16. In answer to the allegations of paragraph 16, Defendant adopts and fully incorporates by reference its responses to paragraphs 1-15.

17. In answer to the allegations of paragraph 17 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

STATE CAUSES OF ACTION

Plaintiff v. Defendant Officer Travis (*Battery*)

18. In answer to the allegations of paragraph 18 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

19. In answer to the allegations of paragraph 19 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

20. In answer to the allegations of paragraph 20 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

21. In answer to the allegations of paragraph 21 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

22. In answer to the allegations of paragraph 22 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

23. In answer to the allegations of paragraph 23 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

Plaintiff v. Defendant City of Pittsburg (State Battery Claim)

24. In answer to the allegations of paragraph 24 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

Plaintiff v. Defendant Officer Travis (Negligence)

25. In answer to the allegations of paragraph 25 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its

1 denials on that ground, deny both generally and specifically, each and every, all and singular, the
2 allegations contained therein.

3 26. In answer to the allegations of paragraph 26 of the complaint, this defendant has
4 no information or belief to enable it to answer said allegations, and for that reason and basing its
5 denials on that ground, deny both generally and specifically, each and every, all and singular, the
6 allegations contained therein.

7 27. In answer to the allegations of paragraph 27 of the complaint, this defendant has
8 no information or belief to enable it to answer said allegations, and for that reason and basing its
9 denials on that ground, deny both generally and specifically, each and every, all and singular, the
10 allegations contained therein.

11 28. In answer to the allegations of paragraph 28 of the complaint, this defendant has
12 no information or belief to enable it to answer said allegations, and for that reason and basing its
13 denials on that ground, deny both generally and specifically, each and every, all and singular, the
14 allegations contained therein.

15 29. In answer to the allegations of paragraph 29 of the complaint, this defendant has
16 no information or belief to enable it to answer said allegations, and for that reason and basing its
17 denials on that ground, deny both generally and specifically, each and every, all and singular, the
18 allegations contained therein.

19 30. In answer to the allegations of paragraph 30 of the complaint, this defendant has
20 no information or belief to enable it to answer said allegations, and for that reason and basing its
21 denials on that ground, deny both generally and specifically, each and every, all and singular, the
22 allegations contained therein.

23 **Plaintiff v. Defendant City of Pittsburg (State Negligence Claim)**

24 31. In answer to the allegations of paragraph 31 of the complaint, this defendant has
25 no information or belief to enable it to answer said allegations, and for that reason and basing its
26 denials on that ground, deny both generally and specifically, each and every, all and singular, the
27 allegations contained therein.
28

Plaintiff v. Defendant Officer Travis (52.1 Civil Rights Violation)

32. In answer to the allegations of paragraph 32 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

33. In answer to the allegations of paragraph 33 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

34. In answer to the allegations of paragraph 34 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

35. In answer to the allegations of paragraph 35 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

36. In answer to the allegations of paragraph 36 of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denials on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

DEMAND

Defendant demands a Jury Trial.

FIRST AFFIRMATIVE DEFENSE

AS AND FOR A FIRST, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

Plaintiff's causes of action against Defendant are barred by the statute of limitations. See California Code of Civil Procedure §§ 335.1, 340, and/or 343.

SECOND AFFIRMATIVE DEFENSE

AS AND FOR A SECOND, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
ALLEGES:

Plaintiff failed to mitigate his damages.

THIRD AFFIRMATIVE DEFENSE

AS AND FOR A THIRD, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
ALLEGES:

Defendant is immune from Plaintiff's state-law claims pursuant to the provisions of §§
815, 815.2, 820.2, 820.4, 820.6, 820.8, 821.6, 844.6, and 845.6 of the Government Code of the
State of California.

FOURTH AFFIRMATIVE DEFENSE

AS AND FOR A FOURTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
ALLEGES:

Should plaintiff recover non-economic damages against any defendant, the liability for
non-economic damages is limited to the degree of fault and several liability of said defendant
pursuant to Civil Code section 1431.2 and a separate, several judgment shall be rendered against
said defendant based upon said defendant's degree of fault and several liability.

FIFTH AFFIRMATIVE DEFENSE

AS AND FOR A FIFTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
ALLEGES:

Plaintiff's causes of action against Defendant are barred by *Heck v. Humphrey*, 512 U.S.
477 (1994).

SIXTH AFFIRMATIVE DEFENSE

AS AND FOR A SIXTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
ALLEGES:

Plaintiff's causes of action against Defendant are barred by collateral estoppel and/or res
judicata.

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SEVENTH AFFIRMATIVE DEFENSE

AS AND FOR A SEVENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

That plaintiff assumed the risk of any injuries and/or damages resulting from the matters set forth in said complaint, and that said assumption of risk by plaintiffs was a cause of the injuries and/or damages alleged by plaintiffs, if any there were.

EIGHTH AFFIRMATIVE DEFENSE

AS AND FOR A EIGHTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

That Plaintiff was himself negligent and careless in and about the matters and events set forth in the complaint, and that said negligence contributed to his alleged injuries and/or damages. A verdict of the jury in favor of plaintiff, if any, which may be rendered in this case must therefore be reduced by the percentage that plaintiff's negligence contributed to the accident and injuries complained of, if any there were.

NINTH AFFIRMATIVE DEFENSE

AS AND FOR A NINTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

Defendant alleges it is entitled to a set-off of any damages recovered by Plaintiff.

TENTH AFFIRMATIVE DEFENSE

AS AND FOR A TENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

Defendant alleges that plaintiff failed to set forth the facts sufficient to state a cause of action due to a failure to comply with claims requirements of the California Government Code §§ 900 et. seq.

ELEVENTH AFFIRMATIVE DEFENSE

AS AND FOR A ELEVENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

Plaintiff's causes of action against Defendant are barred by unclean hands.

TWELFTH AFFIRMATIVE DEFENSE

AS AND FOR A TWELFTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

Defendant is immune from 42 U.S.C. § 1983 liability pursuant to the doctrine of qualified immunity. See *White v. Pauly*, 137 S. Ct. 548 (2017), *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011) and *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

WHEREFORE, defendant prays that plaintiffs take nothing by way of the complaint on file herein and that defendants have judgment for its costs, attorneys' fees and for such other and further relief as the court deems proper.

Respectfully submitted,

Dated: April 10, 2019

ALLEN, GLAESSNER,
HAZELWOOD & WERTH, LLP

By: /s/ Kevin P. Allen
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KEVIN P. ALLEN
Attorneys for Defendants
CITY OF PITTSBURG and G. TRAVIS